

# BOULDER CITY MUNICIPAL AIRPORT



## AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

*Prepared for:*

**Boulder City Municipal Airport**  
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## 1. OBJECTIVES/POLICY STATEMENT (§23.1, §23.23)

The City of Boulder City (the "CITY") owner of Boulder City Municipal Airport has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR part 23. The CITY is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The CITY has signed airport grant assurances that it will comply with 49 CFR part 23.

It is the policy of the CITY to ensure that ACDBEs as defined in part 23 have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that our ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions our airport(s);
6. To promote the use of ACDBEs in all types of concessions activities at our airport(s);
7. To assist the development of firms that can compete successfully in the marketplace outside the ACDBE program; and
8. To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

Marissa Adou, Airport Manager, has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the Airport Manager is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the CITY in its financial assistance agreements with the Department of Transportation.

The Airport Manager has disseminated this policy statement to the CITY and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area. The distribution was accomplished by posting it on the official website of the Boulder City Municipal Airport.

A handwritten signature in black ink, appearing to read "Marissa Adou", is written over a horizontal line.

Date: 1-15-2025

Marissa Adou  
Airport Manager

City of Boulder City, Nevada



## 2. GENERAL REQUIREMENTS

### 2.1. Objectives (§23.1)

The objectives are found in the policy statement on the first page of this program.

### 2.2. Definitions (§23.3)

The CITY will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

### 2.3. Applicability (§23.5)

Boulder City Municipal Airport is a non-hub primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

### 2.4. Non-Discrimination Requirements (§23.9)

The CITY will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR part 23 on the basis of race, color, sex, or national origin.

In administering its ACDBE program, the CITY will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

The CITY will include the following assurances in all concession agreements and management contracts it executes with any firm:

“This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.”

### 2.5. Compliance and Enforcement (§23.11)

The CITY acknowledges that the compliance and enforcement provisions of 49 CFR part 26 (§§ 26.101 and 26.105 through 26.109) apply to the concessions program under part 23 in the same way that they apply to FAA recipients and programs under part 26.



### 3. ACDBE PROGRAM

#### 3.1. ACDBE Program Updates (§23.21)

The CITY is the operator of at least one primary airport and is required to have an ACDBE program. This ACDBE program is applicable to the following airport(s):

- **Boulder City Municipal Airport**

Although the program applies to all of the above airports, the CITY will submit a separate goal methodology for each primary airport.

Prior to implementing significant changes to this ACDBE program, the CITY will provide the amended program to FAA for review and approval.

#### 3.2. Administrative Provisions (§23.23)

**Policy Statement:** The CITY is committed to operating its ACDBE program in a nondiscriminatory manner. The Policy Statement is elaborated on the first page of this program.

The CITY will thoroughly investigate, on an annual basis, the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and make reasonable efforts to use these institutions. The CITY will also encourage prime concessionaires to use such institutions.

**ACDBE Liaison Officer (ACDBELO):** We have designated the following individual as our ACDBELO:

Marissa Adou  
1201 Airport Road, Suite 200  
Boulder City, Nevada 89005  
(702) 293-9405  
Madou@bcnv.org

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the CITY complies with all provision of 49 CFR part 23. The ACDBELO has direct, independent access to the City Manager concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in **Attachment 1** to this program.

The ACDBELO is responsible for developing, implementing, and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of two (2), as well as consultant engineers, to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.



4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes the CITY's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on ACDBE matters and achievement.
9. Chairs the ACDBE Advisory Committee.
10. Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDDBU-Minority Resource Center (MRC).
11. Plans and participates in ACDBE training seminars.
12. Acts as liaison to the Unified Certification Program (UCP) in Nevada.
13. Provides outreach to ACDBEs and community organizations to advise them of opportunities.

**Directory:** Nevada Unified Certification Program (UCP) maintains a directory identifying all firms eligible to participate as DBEs and ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE. The Directory clearly specifies whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

### 3.3. Ensuring Nondiscriminatory Participation of ACDBEs (§23.25)

The CITY will not use set-asides or quotas as a means of obtaining ACDBE participation.

The CITY will seek ACDBE participation in all types of concession activities.

The CITY will maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. The CITY will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)):

1. Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;
2. Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
3. When practical, structuring concession activities to encourage and facilitate the participation of ACDBEs;
4. Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the recipient's ACDBE program will affect the procurement process; and



5. Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation.

The CITY will also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures we will implement, as needed:

1. Establishing concession-specific goals for particular concession opportunities.
  - a. In setting concession-specific goals for concession opportunities other than car rental, the CITY will explore, to the maximum extent practicable, all available options to set goals that concessionaires can meet through direct ownership arrangements. A concession-specific goal for any concession other than car rental may be based on purchases or leases of goods and services only when the analysis of the relative availability of ACDBEs and all relevant evidence reasonably supports that there is *de minimis* availability for direct ownership arrangement participation for that concession opportunity.
  - b. In setting car rental concession-specific goals, the CITY will not require a car rental company to change its corporate structure to provide for participation via direct ownership arrangement. When the overall goal for car rental concessions is based on purchases or leases of goods and services, the CITY is not required to explore options for direct ownership arrangements prior to setting a car rental concession-specific goal based on purchases or leases of goods and services.
  - c. If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, the CITY will calculate the goal as a percentage of the total estimated annual gross receipts from the concession.
  - d. If the goal applies to purchases or leases of goods and services from ACDBEs, the CITY will calculate the goal as a percentage of the total estimated dollar value of all purchases to be made by the concessionaire.
  - e. When a concession-specific goal is set, the CITY will require competitors to make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.
  - f. The administrative procedures applicable to contract goals in part 26, § § 26.51 through 26.53. apply with respect to concession-specific goals.
  - g. In setting car rental concession-specific goals, the CITY will not require a car rental company to change its corporate structure to provide for participation via direct ownership arrangement. When the overall goal for car rental concessions is based on purchases or leases of goods and services, the CITY is not required to explore options for direct ownership arrangements prior to setting a car rental concession-specific goal based on purchases or leases of goods and services.
  - h. If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with an ACDBE, the CITY will calculate



the goal as a percentage of the total estimated annual gross receipts from the concession.

- i. If the goal applies to purchases or leases of goods and services from ACDBEs, the CITY will calculate the goal as a percentage of the total estimated dollar value of all purchases to be made by the concessionaire.
  - j. When a concession-specific goal is set, the CITY will require competitors to make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.
  - k. The administrative procedures applicable to contract goals in part 26, § § 26.51 through 26.53. apply with respect to concession-specific goals.
2. Negotiate with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the non-car rental concessions.
  3. With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

The CITY requires businesses subject to car rental and non-car rental ACDBE goals at the airport to make good faith efforts to meet goals set pursuant to this section.

### 3.4. Fostering Small Business Participation (§23.26)

The CITY has created a small business element to provide for the structuring of concession opportunities to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of concession opportunities that may preclude small business participation in solicitations.

The small business element is incorporated as **Attachment 10** to this ACDBE Program. The program elements will be actively implemented to foster small business participation. The CITY acknowledges that active use of the small business element is a requirement of the good faith implementation of this ACDBE program.

### 3.5. Reporting (§23.27)

The CITY will retain sufficient basic information about our ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with part 23. This data will be retained for a minimum of 3 years following the end of the concession agreement or other covered contract.

The CITY will submit an annual report on ACDBE participation to the FAA by March 1 following the end of each fiscal year. This report will be submitted in the format acceptable to the FAA and contain all of the information described in the Uniform Report of ACDBE Participation.

1. The CITY will create and maintain active participants list information and enter it into a system designated by the FAA. [Recipient] will collect the following information about ACDBE and non-ACDBEs who seek to work on each of our concession opportunities.
  - a. Firm name;
  - b. Firm address including ZIP code;



- c. Firm status as an ACDBE or non-ACDBE;
- d. Race and gender information for the firm’s majority owner;
- e. NAICS code applicable to the concession contract in which the firm is seeking to perform;
- f. Age of the firm; and
- g. The annual gross receipts of the firm.

The CITY will collect the data from all active participants for concession opportunities by requiring the information to be submitted with their proposals or initial responses to negotiated procurements. The CITY will enter this data in FAA’s designated system no later than March 1 following the fiscal year in which the relevant concession opportunity was awarded.

The state department of transportation in each Unified Certification Program (UCP) established pursuant to 49 CFR § 26.81 must report certain information from the UCP directory to DOT’s Departmental Office of Civil Rights each year. The CITY, if a certifying member of the state UCP, ensures the collection and reporting of the following information in the UCP directory:

1. The number and percentage of in-state and out-of-state ACDBE certifications for socially and economically disadvantaged by gender and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority);
2. The number of ACDBE certification applications received from in-state and out-of-state firms and the number found eligible and ineligible;
3. The number of decertified firms;
  - a. Total in-state and out-of-state firms decertified;
  - b. Names of in-state and out-of-state firms decertified because SEDO exceeded the personal net worth cap;
  - c. Names of in-state and out-of-state firms decertified for excess gross receipts beyond the relevant size standard.
4. Number of in-state and out-of-state ACDBEs summarily suspended;
5. Number of in-state and out-of-state ACDBE applications received for an individualized determination of social and economic disadvantage status; and
6. Number of in-state and out-of-state ACDBEs whose owner(s) made an individualized showing of social and economic disadvantaged status.

### 3.6. Compliance and Enforcement Procedures (§23.29)

The CITY will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR part 23.

1. The CITY will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.107.



2. The CITY will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (See **Attachment 3**).



## 4. CERTIFICATION AND ELIGIBILITY

### 4.1. Certification Standards and Procedures (§23.31)

The CITY is a non-certifying member of the Nevada Unified Certification Program (NUCP) and relies upon the NUCP's determinations of certification eligibility. NUCP will use the certification standards of Subpart C of Part 23 to determine the eligibility of firms to participate as ACDBEs in airport concessions contracts. To be certified as an ACDBE, a firm must meet all certification eligibility standards. Certifying NUCP members make all certification decisions based on the facts as a whole.

The NUCP directory of eligible ACDBEs specifies whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

Firms may apply for ACDBE and/or DBE Certification using the NUCP website:

***www.nevadadbe.com***

For information about the certification process firms should contact:

**Nevada Department of Transportation  
External Civil Rights Division**  
123 E. Washington Ave.  
Las Vegas Nevada 89101  
Phone: (775) 888-7497  
E-Mail: [ndot@dbesystem.com](mailto:ndot@dbesystem.com)

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

### 4.2. Business Size Standards (§23.33)

In general, a firm will be considered as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous five (5) fiscal years, do not exceed \$56.42 million. The following special exceptions apply to the general small business size limit:

1. The limit for passenger car rental companies is \$75.23 million, averaged over the firm's previous five (5) fiscal years.
2. The size standard for banks and other financial institutions is \$1 billion in assets.
3. The size standard for pay telephone companies is 1500 employees.
4. The size standard for new car dealers is 350 employees.

For size purposes, gross receipts (as defined in 13 CFR 121.104(a)) of affiliates are included in a manner consistent with 13 CFR 121.104(d), except in the context of joint ventures. For gross receipts attributable to joint venture partners, a firm must include in its gross receipts its proportionate share of joint venture receipts, unless the proportionate share already is accounted for in receipts reflecting transactions between the firm and its joint ventures (e.g., subcontracts from a joint venture entity to joint venture partners).



### 4.3. Personal Net Worth Limits (§23.35)

The personal net worth standard used in determining eligibility for purposes of part 23 is posted online on the Departmental Office of Civil Rights' webpage, available at <https://www.transportation.gov/DBEPNW>. Any individual who has a PNW exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

### 4.4. Firms Certified as DBEs (§23.37)

The CITY will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, the CITY will ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program.

### 4.5. Other ACDBE Certification Requirements (§23.39)

The provisions of § 26.83(c)(1) of 49 CFR part 26 do not apply to ACDBE certifications. Instead, in determining whether a firm is an eligible ACDBE, the CITY will take the following steps:

5. Visit the firm's principal place of business, virtually or in person, and interview the SEDO, officers, and key personnel. The CITY will review those persons' résumés and/or work histories. The CITY will maintain a complete audio recording of the interviews. The CITY will also visit one or more active job sites (if there is one). These activities comprise the "on-site review" (OSR), a written report of which the CITY will keep in its files.
6. Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, articles of incorporation/organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued certificates of good standing;
7. Analyze the bonding and financial capacity of the firm; lease and loan agreements; and bank account signature cards;
8. Determine the work history of the firm, including any concession contracts or other contracts it may have received; and payroll records;
9. Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;
10. Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform;
11. Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 5 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service; and
12. Require applicants for ACDBE certification to complete and submit an appropriate application form, except as otherwise provided in § 26.85 of part 26.



In reviewing the Declaration of Eligibility required by § 26.83(j), the CITY will ensure that the ACDBE applicant provides documentation that it meets the applicable size standard in § 23.33.

For purposes of this part, the term prime contractor in § 26.87(j) includes a firm holding a contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of § 26.63(c)(2) do not apply. The eligibility of ANC-owned firms for purposes of this part is governed by § 26.63(c)(1).

The CITY will use the Uniform Certification Application found in part 26 of this chapter without change. If the CITY seeks to supplement the form by requesting specified additional information consistent with this part, we will first seek written approval of the concerned Operating Administration and update this ACDBE program plan.

The CITY will require every applicant to state that it is applying for certification as an ACDBE and complete all of section 5.

Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs.



## 5. GOALS, GOOD FAITH EFFORTS, AND COUNTING

### 5.1. Basic Overall Goal Requirement (§23.41)

The CITY will establish two separate overall ACDBE goals: one for car rentals and another for concessions other than car rentals. The overall goals will cover a three-year period and the sponsor will review the goals annually to make sure the goal continues to fit the sponsor's circumstances. The CITY will submit any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding three (3) years do not exceed \$200,000, the CITY is not required to develop and submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding three (3) years do not exceed \$200,000, the CITY is not required to develop and submit an overall goal for concessions other than car rentals. The CITY understands that "revenue" means total revenue generated by concessions, not the revenue received by the airport from concessions agreements.

The CITY's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

### 5.2. Consultation in Goal Setting (§23.43)

The CITY consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

When submitting our overall goals, we will identify the stakeholders that we consulted with and provide a summary of the information obtained from the stakeholders.

The requirements of this section do not apply if no new concession opportunities will become available during the goal period. However, the CITY will take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

### 5.3. Submitting Overall Goals (§23.45)

Overall goals will be submitted to the FAA for approval. The overall goals meeting the requirements of this subpart are due based on a schedule established by the FAA and posted on the FAA's website.

**Boulder City Municipal Airport's Triennial ACDBE Goal Periods**

| Primary Airport Size | Region      | Date Due        | Period Covered | Next Goal Due                       |
|----------------------|-------------|-----------------|----------------|-------------------------------------|
| Non-Hub              | All regions | October 1, 2025 | 2026/2027/2028 | October 1, 2028<br>(2029/2030/2031) |

FAA Schedule:

[https://www.faa.gov/sites/faa.gov/files/about/office\\_org/headquarters\\_offices/acr/DBE\\_and\\_ACDBE\\_Reporting\\_Requirements\\_Schedule\\_Final.pdf](https://www.faa.gov/sites/faa.gov/files/about/office_org/headquarters_offices/acr/DBE_and_ACDBE_Reporting_Requirements_Schedule_Final.pdf)



The goals must be submitted every three years based on the published schedule. If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the sponsor will submit an appropriate adjustment to our overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

The CITY will establish overall goals in accordance with the 2-Step process as specified in § 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, “base figure”. The second step is to examine all relevant evidence reasonably available in the sponsor’s jurisdiction to determine if an adjustment to the Step 1 “base figure” is necessary so that the goal reflects as accurately as possible the ACDBE participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training, and union apprenticeship).

The CITY will also include a projection of the portions of the overall goal expected to be met through race-neutral and race-conscious measures, respectively.

If the FAA determines that the CITY’s goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with us, adjust the overall goal or race-conscious/race-neutral “split.” In such a case, the adjusted goal is binding on the CITY.

#### **5.4. Counting ACDBE Participation for Car Rental Goals (§23.53)**

The CITY will count ACDBE participation toward overall goals for car rental as provided in 49 CFR 23.53.

#### **5.5. Counting ACDBE Participation for Concessions Other than Car Rentals (§23.55)**

The CITY will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.55.

#### **5.6. Goal Shortfall Accountability (§23.57)**

If the awards and commitments on the Uniform Report of ACDBE participation at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to fully meet our goal for the new fiscal year;
- As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, we will retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review.

FAA may impose conditions as part of its approval of CITY’s analysis and corrective actions including, but not limited to, modifications to our overall goal methodology, changes in our race-



conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

The CITY may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:

- The CITY does not submit the analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of § 23.57;
- FAA disapproves the analysis or corrective actions; or
- The CITY does not fully implement:
  - a. The corrective actions to which we have committed, or
  - b. Conditions that FAA has imposed following review of our analysis and corrective actions.
  - c. If information coming to the attention of FAA demonstrates that current trends make it unlikely that we, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FAA may require us to make further good faith efforts, such as modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

### 5.7. Quotas or Set-asides (§23.61)

The CITY will not use quotas or set-asides as a means of obtaining ACDBE participation.



## 6. OTHER PROVISIONS

### 6.1. Existing Agreements (§23.71)

If permitted by the existing agreement, the CITY will use any means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

### 6.2. Privately-Owned or Leased Terminal Buildings (§23.73)

The CITY will pass through applicable provisions of part 23 to any private terminal owner or lessee via our agreement with the owner or lessee. We will ensure that the owner or lessee complies with part 23. We will obtain from the owner or lessee the goals and other elements of the ACDBE program required under part 23.

### 6.3. Long-Term Exclusive Agreements (§23.75)

The CITY will not enter into a long-term and exclusive agreements for concessions without prior approval of the FAA Regional Civil Rights Office. We understand that a “long-term” agreement is one having a term of more than 10 years, including any combination of base term and options or holdovers to extend the term of the agreement, if the effect is a term of more than ten years. We understand that an exclusive agreement is one having a type of business activity that is conducted solely by a single business entity on the entire airport, irrespective of ACDBE participation.

The CITY may enter into a long-term, exclusive concession agreement only under the following conditions:

1. Special local circumstances exist that make it important to enter such agreement; and
2. FAA approves the CITY’s plan for meeting the standards of paragraph (c) of § 23.75.

To obtain FAA approval of a long-term exclusive concession agreement, the CITY will submit the following information to the FAA. The items in paragraphs (1) through (3) below will be submitted at least 60 days before the solicitation is released and items in paragraphs (4) through (7) will be submitted at least 45 days before contract award:

1. A description of the special local circumstances that warrant a long-term, exclusive agreement;
2. A copy of the solicitation;
3. ACDBE contract goal analysis developed in accordance with this part;
4. Documentation that ACDBE participants are certified in the appropriate NAICS code in order for the participation to count towards ACDBE goals;
5. A general description of the type of business or businesses to be operated by the ACDBE, including location and concept of the ACDBE operation;
6. Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE, if applicable;
7. Final long-term exclusive concession agreement, subleasing or other agreements;



- a. In order to obtain FAA approval of a long-term exclusive concession agreement that has been awarded through direct negotiations, the CITY will submit the items in paragraphs (1) and (3) through (7) of this section at least 45 days before contract award;
- b. In order to obtain FAA approval of an exclusive concession agreement that becomes long-term as a result of a holdover tenancy, the CITY will submit to the responsible FAA regional office a holdover plan for FAA approval at least 60 days prior to the expiration of the current lease term. The holdover plan shall include the following information:
  - i. A description of the special local circumstances that warrant the holdover;
  - ii. Anticipated date for renewal or re-bidding of the agreement;
  - iii. The method to be applied for renewal or re-bidding of the agreement;
  - iv. Submission of all items required under (3), (4), (6), and (7) of this section for the agreement in holdover status or an explanation as to why the item is not available or cannot be submitted.

#### **6.4. Preemption of Local Requirements (§23.77)**

In the event that a State or local law, regulation, or policy differs from the requirements of this part, the CITY will, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of 49 CFR part 23. However, nothing in part 23 preempts any State or local law, regulation, or policy enacted by the governing body of the CITY or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with part 23.

#### **6.5. Geographic Preferences (§23.79)**

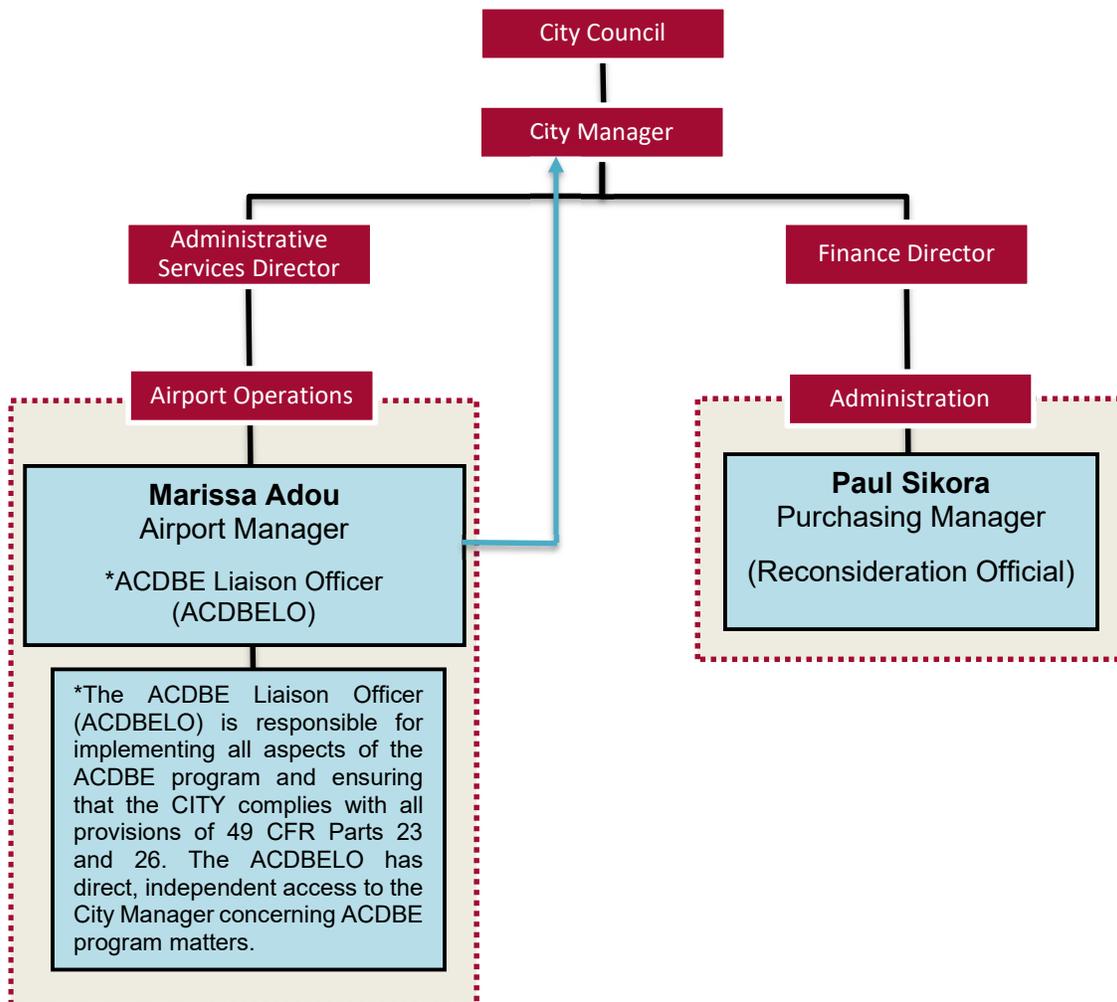
The CITY will not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives a concessionaire located in one place (e.g., our local area) an advantage over concessionaires from other places in obtaining business as, or with, a concession at our airport(s).



**ATTACHMENT 1**  
**ORGANIZATIONAL CHART**



Organizational Chart





**ATTACHMENT 2**  
**NEVADA DIRECTORY OF CERTIFIED DBE/ACDBE FIRMS**  
**(WEBSITE LINK)**



The Nevada Directory of Certified DBE/ACDBE Firms is available to view online at:

***<http://www.nevadadbe.com>***



**ATTACHMENT 3**  
**MONITORING AND ENFORCEMENT MECHANISMS**



### **ACDBE Monitoring and Enforcement Mechanisms**

The CITY has several remedies available to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to 49 CFR Part 23; and
3. The CITY may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE program, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 23 and 2 CFR parts 180 and 1200
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.



**ATTACHMENT 4**

**OVERALL GOAL METHODOLOGY – CONCESSIONS OTHER THAN CAR RENTALS**



Attachment 4 is prepared as a separate document and is updated every three years.

The most current Overall ACDBE Three-Year Goal Methodology for Concessions Other Than Car Rentals will be available on the Boulder City Municipal Airport's website

***<https://www.flybouldercity.com/721/Doing-Business>***

and/or may be inserted here.



**ATTACHMENT 5**  
**OVERALL GOAL METHODOLOGY – CAR RENTALS**



Attachment 5 is prepared as a separate document and is updated every three years.

The most current Overall ACDBE Three-Year Goal Methodology for Car Rentals will be available on the Boulder City Municipal Airport's website

***<https://www.flybouldercity.com/721/Doing-Business>***

and/or may be inserted here.



**ATTACHMENT 6**  
**FORM 1 & 2 FOR DEMONSTRATION OF GOOD FAITH EFFORTS**



[Forms 1 and 2 should be provided as part of the solicitation documents.]

**FORM 1: AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UTILIZATION**

The undersigned bidder/respondent has satisfied the ACDBE requirements of the concession [bid/RFP/RLI] in the following manner:

- Bidder/respondent has met the ACDBE goal

The bidder/offeror is committed to a minimum of \_\_\_\_ % ACDBE participation in this opportunity.

- Bidder/respondent has not met the ACDBE goal

The bidder/respondent is committed to a minimum of \_\_\_\_% ACDBE participation in this opportunity and has submitted documentation demonstrating good faith efforts.

Legal name of bidder/respondent's firm: \_\_\_\_\_

Bidder/Respondent Representative:

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**FORM 2: LETTER OF INTENT**

*Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.*

Name of bidder/respondent's firm: \_\_\_\_\_

Name & title of firm's AR: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Name of ACDBE firm: \_\_\_\_\_

Name & title of ACDBE firm's AR: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Role to be performed by ACDBE firm:

| Description of Work | NAICS | Projected Dollar Amount / % | Joint Venture/Subtenant/Supplier* |
|---------------------|-------|-----------------------------|-----------------------------------|
|                     |       |                             |                                   |
|                     |       |                             |                                   |
|                     |       |                             |                                   |

*\*For suppliers only, state how the ACDBE will perform (e.g., regular dealer, manufacturer, broker). Count only fees and commissions if the supplier performs as a broker.*

The undersigned bidder/respondent is committed to utilizing the above-named ACDBE firm for the work described above. The total expected dollar value of this work is \$ \_\_\_\_\_. The bidder/respondent understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into an agreement ACDBE firm identified above that reflects the type and amount of participation listed. Bidder/respondent understands that upon submitting this form, it may not substitute or terminate the ACDBE listed above without following the procedures of 49 CFR Part 26, §26.53.

\_\_\_\_\_  
Signature of Bidder/Respondent's Authorized Representative

Date: \_\_\_\_\_

The undersigned ACDBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for ACDBE participation therefore.

\_\_\_\_\_  
Signature of ACDBE's Authorized Representative

Date: \_\_\_\_\_

**If the bidder/respondent does not receive award of the prime concession opportunity, all representations in this Letter of Intent shall be null and void.**

**Submit this page for each ACDBE participant.**



**ATTACHMENT 7**  
**ACDBE CERTIFICATION APPLICATION FORMS**  
**(WEBSITE LINK)**



Firms applying for ACDBE Certification in Nevada should visit the Nevada Unified Certification Program (NUCP) website. Application forms for ACDBE Certification are available online.

***<http://www.nevadadbe.com/website/dbe-program.php>***

A copy of the Uniform Certification Application as found in Appendix F of 49 CFR Part 26, and is available to view online through the US Department of Transportation website at:

***<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>***



**ATTACHMENT 8**  
**REGULATIONS: 49 CFR PART 23**  
**(WEBSITE LINK)**



ACDBE program regulations are found in Title 49 of the Code of Federal Regulations, part 23. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

***<https://www.ecfr.gov/current/title-49/subtitle-A/part-23>***



**ATTACHMENT 9**  
**NEVADA UNIFIED CERTIFICATION PROGRAM AGREEMENT**

# NEVADA UNIFIED CERTIFICATION PROGRAM AGREEMENT

## NEVADA UNIFORM CERTIFICATION PROGRAM

### **Section 1. Definitions**

### **Section 2. Administration**

2.1 Nevada Uniform Certification Program

2.2 Nevada Uniform Certification Committee

2.3 Non-applicable Contracts

### **Section 3. Procedures**

3.1 Policy for Processing Applications

3.2 Application and Decision

3.3 Denials

3.4 Removals

3.5 Appeals

3.6 Result of Appeal

### **Section 4. Standards**

4.1 Generally

4.2 Business Size

4.3 Confidentiality

### **Section 5. Cooperation**

## **SECTION 1. DEFINITIONS**

### **1.1 Agreement**

“Agreement” means this document, the Nevada Uniform Certification Program agreement.

### **1.2 Committee**

“Committee” means the Committee created by this document to administer and implement the UCP.

### **1.3 Contract**

“Contract” means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

### **1.4 Contractor**

“Contractor” means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

### **1.5 Department or DOT**

“Department” and “DOT” mean the United States Department of Transportation.

### **1.6 Disadvantaged Business Enterprise or DBE**

“Disadvantaged Business Enterprise” and “DBE” mean a for-profit small business concern --  
(a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

- (b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- (c) Meets all certification criteria under 49 CFR, Part 26.

### **1.7 Processing Agency**

“Processing Agency” means the specific UCP agency to which a firm applies for DBE certification.

### **1.8 Joint Venture**

“Joint venture” means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

### **1.9 Operating Administration**

“Operating administration” means the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA).

### **1.10 Personal Net Worth**

“Personal net worth” means the net value of the assets of an individual remaining after total liabilities are deducted as defined in the Regulation.

## **1.11 Primary Industry Classification**

“Primary industry classification” means the North American Industry Classification System (NAICS) code designation which best describes the primary business of a firm. The NAICS Manual is available through the National Technical Information Service (NTIS) of the U. S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site ([www.ntis.gov/naics](http://www.ntis.gov/naics)).

## **1.12 Recipient**

“Recipient” means a Nevada recipient of any of the following types of funds:

- (a) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Pub L. 102-240, 105 Stat.1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat.107.
- (b) Federal transit funds authorized by titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or be Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21 Pub. L. **105-178**.
- (c) Airport funds authorized by 49 U.S.C. 47101, et. seq.

## **1.13 Regulation**

“Regulation” means 49 CFR, Parts 26 and 23, and any revisions, additions, deletions, or replacements.

## **1.14 Secretary**

“Secretary” means the Secretary of the United States Department of Transportation.

## **1.15 Socially and Economically Disadvantaged Individual**

Socially and economically disadvantaged individual” means any individual who is a citizen (or lawfully admitted permanent resident) of the United States as set forth in 49 CFR, Part 26.

**1.16 State**

“State” means the State of Nevada.

**1.17 Uniform Certification Program or UCP**

“Uniform Certification Program” and “UCP” mean the program created by this agreement.

**SECTION 2. ADMINISTRATION**

**2.1 Nevada Uniform Certification Program**

The Nevada Uniform Certification Program is established according to this agreement to certify all DBEs on DOT-assisted contracts in Nevada.

**2.2 Nevada Uniform Certification Committee**

The Nevada Uniform Certification Committee is established to implement and administer the Nevada Uniform Certification Program (UCP). The UCP shall follow all certification procedures and standards of 49 CFR Part 26, and shall comply with all certification and nondiscrimination requirements of the regulation. The Committee shall consist of the Director of the State of Nevada Department of Transportation or designee; the Director of Aviation of the Clark County Department of Aviation, McCarran International Airport, or designee; the President-CEO for Reno-Tahoe Airport Authority, or designee; the General Manager of Regional Transportation Commission of Southern Nevada, or designee; the Executive Director of Regional Transportation Commission of Washoe County, or designee; and any agencies within the state of Nevada who may become recipients of DOT-assisted contracts. Any subsequent agencies will be invited to participate through a memorandum of Understanding. The agency shall have the option to participate as a certifying agency, a non-certifying Committee member, or may participate solely as a user of the UCP Directory.

(a) The Committee shall:

- (1) Make all certification decisions on behalf of all recipients in the state with respect to participation in the DOT DBE Program;

- (i) Certification decisions by the Committee shall be binding on all recipients within the state.
- (ii) The Committee shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state of Nevada.
- (iii) The Committee shall carry out all obligations of recipients with respect to certification.

(2) Ensure that only firms certified as eligible DBEs under this section participate as DBEs in each recipient’s program by only re/certifying eligible DBEs as DBEs (This does not require the Committee to monitor the recipients);

(3) Maintain a Uniform DBE directory containing, for all firms certified by the Committee (including those from other states certified under the provisions of this section), in the listing for each firm, its address, phone number, and the types of work the firm has been certified to perform as a DBE. The Committee shall also:

- (i) print the directory at least annually;
- (ii) make updated information available to contractors and the public on request;
- (iii) make the directory available to the public electronically, on the internet, as well as in print; and

a) the electronic directory will be maintained by the Agency designated by this Committee on their website for public viewing.

(b) the electronic directory will be updated as needed by the designated Agency.

(4) Follow all certification procedures and standards of this agreement, on the same basis as recipients;

(5) Cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations;

(6) Implement DOT directives and guidance concerning certification matters; and

(7) Make all decisions administering and implementing the UCP.

(b) All certifications by the Committee shall be pre-certifications; i.e., certifications that have been made final before the opening date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(c) The Committee is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs certifying under 49 CFR 26 that are considering the firm's application.

(d) The Committee may accept the certification of any other UCP or DOT recipient. The Committee may also enter into written reciprocity agreements with other UCPs.

(e) This agreement shall commit recipients to ensuring that the Committee has sufficient resources and expertise to carry out the requirements of this agreement.

(1) Each Recipient shall allocate sufficient funding to ensure the implementation of this Program. No significant additional funding or shifting of resources is required to carry out the requirements of the UCP.

(f) The UCP will be fully operational immediately upon the approval of the agreement by the Secretary.

## **2.3 Non-applicable Contracts**

(a) If a recipient is letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this agreement does not apply to the contract.

(b) If the recipient is letting a contract in which DOT financial assistance does not participate, this agreement does not apply to the contract.

## **SECTION 3. PROCEDURES**

### **3.1 Policy for Processing Applications**

Certification applications are not processed for:

(a) Not for profit firms.

Firms who have been determined as ineligible to participate in the DBE program

and have been denied certification based on 49 CFR, Parts 26 and 23 shall not reapply for certification for twelve (12) months from date of denial

In order to mitigate the administrative and processing costs incurred by the Processing Agency, firms who withdraw their applications shall not reapply for certification for six (6) months from date of withdrawal.

### **3.2 Application and Decision**

(a) To become a DBE a firm must submit an application to the Committee through one of the designated Processing Agencies of the Committee. The designated Processing Agencies are: Clark County Department of Aviation (DOA), Reno-Tahoe Airport Authority (RTAA), or State of Nevada Department of Transportation (NDOT). The Committee shall:

- (1) Use the uniform application required by 49 CFR Part 26;
- (2) Ensure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(b) The Processing Agency shall review all information on the form and associated documentation provided by DBE applicant.

(c) The Processing Agency shall conduct an onsite visit to the principal offices of the firm. Any other Committee Member(s), or designee, may also attend. The Processing Agency shall be responsible to:

- (1) Interview the principal officers of the firm and review their resumes and/or work histories; and
- (2) Perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in the local area. The Committee may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(d) The Processing Agency shall report its findings and make a recommendation to the Committee relative to an applicant firm's eligibility. The Committee shall meet monthly, either in person, by phone, electronically or any combination thereof, to review and determine certification eligibility.

(e) Three (3) Committee members, or designee(s), shall constitute a quorum, and the approval of the quorum regarding certification decisions shall be binding on the entire Committee.

(f) The Committee shall take all the following steps in determining whether a DBE firm meets the standards of section 3 of this agreement:

- (1) If the firm is a corporation, analyze the ownership of stock in the firm;
- (2) Analyze the bonding and financial capacity of the firm;
- (3) Determine the work history of the firm, including contracts it has received and work it has completed;
- (4) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
- (5) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- (6) Follow the on-site reporting form and standards set forth by the Committee.

(g) The Processing Agency shall maintain the files of DBEs processed by that agency. When a Committee member, in connection with its consideration of the eligibility of a firm, makes a written request for certification information the Processing Agency has obtained about that firm (e.g., including application materials or the report of a site visit, if the Processing Agency has made one to the firm), the Processing Agency shall promptly make the information available to that member.

(h) The Committee, including the Processing Agency, shall safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential, personal financial or business information, consistent with applicable DBE rules, Federal, state, and local law.

(i) Once the Committee has certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of subsection 3.4 of this agreement. The Committee may elect not to require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.

(j) Every DBE certified by the Committee shall inform the Processing Agency, in writing, of any change in circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this agreement or any material change in the information provided in the Committee's application form.

- (1) Changes in management responsibility among members of a limited liability company are covered by this requirement.
- (2) The DBE shall attach supporting documentation describing in detail the nature of such changes.
- (3) The notification of changes shall take the form of an affidavit sworn to by the owners of the firm before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The DBE shall provide the written notification within 30 days of the occurrence of the change. If the DBE fails to make timely notification of such a change, it may be deemed to have failed to cooperate in accordance with section 26.83(l)(3) of the Regulation.

(k) Every DBE shall provide to the Committee, via the Processing Agency, on the anniversary of the date of the DBE's certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit shall affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the DBE has notified the Committee under paragraph (e) of this section. The affidavit, which shall be provided by the Processing Agency, shall specifically affirm that the firm continues to meet the size standards for a small business as established by SBA business size criteria, the subpart of 49 CFR Part 26 governing concession size standards, or any other cap provided in 49 CFR Part 26, documenting this affirmation with supporting documentation of the firm's size and gross receipts. If the DBE fails to provide this affidavit in a timely manner, it shall be deemed to have failed to cooperate under section 5(a) of this agreement.

(h) The Processing Agency shall present applications for certification to the Committee within 90 days of receipt of all information required under this part from the applicant firm. The Processing Agency may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. The Committee shall make certification decisions at the time the application is presented to the Committee by the Processing Agency unless specific additional information is deemed to be required by the Committee to assist in rendering a decision on an applicant's eligibility. The Processing Agency shall request such additional information from applicant within thirty (30) days, and shall re-present the case to the Committee at the next meeting of the UCP, immediately following receipt of information. The Committee's failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under section 3.5 of this

agreement.

### **3.3 Denials**

(a) When the Committee denies a request by a firm to be certified as a **DBE**, which is not currently certified by the recipients or the Committee, the Processing Agency shall provide the firm a written explanation of the Committee's reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based shall be made available to the applicant, on request.

(b) When the Committee makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under section 3.5 of this agreement. Firms may reapply for Certification in as specified in Section 3.1

### **3.4 Removals**

Consideration for removal of eligibility may occur via internal review of the Processing Agency per 49CFR, Part 26.87 (3)(b), DOT/FHWA/FTNFAA directive to initiate a proceeding per 49CFR Part 26.87 (3)(c), or a third party complaint. Third party complaints shall be processed by the UCP Committee as follows:

(a) Ineligibility complaints by a third party.

(1) Any person may file with the Committee, through any one of the member agencies, a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The Committee is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. Confidentiality of complainants' identities shall be protected as provided in section 26.109(b) of the Regulation.

(2) Once acknowledged by the Committee the complaint will be referred to the Processing Agency who shall review its records concerning the firm, any material provided by the firm and the complainant, and other available information, and present its results and recommendations to the Committee. The Processing Agency, either independently or under recommendation by the Committee, may request additional information from the firm or conduct any other investigation that it deems necessary to render a decision.

(3) If the Committee determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, it shall instruct the Processing Agency to provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the Committee determines that such reasonable cause

does not exist, it shall instruct the Processing Agency to notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause shall specifically reference the evidence in the record on which each reason is based.

**Committee or Processing Agency-initiated proceedings.** If, based on other information that comes to the attention of the Committee or a Processing Agency, it determines that there is reasonable cause to believe that a currently certified firm is ineligible, the Processing Agency shall conduct an investigation and inform the Committee of its actions. If the Processing Agency finds evidence that the firm should be considered ineligible, the information shall be provided to the Committee. Once the Committee makes a determination, the Processing Agency shall provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause shall specifically reference the evidence in the record on which each reason is based.

(b) Hearing. When the Processing Agency notifies a firm that there is reasonable cause to remove its eligibility as provided in paragraph (a) or (b) of this section, it shall give the firm an opportunity for a hearing with a third party Reviewing Agency identified in 3.4(d) of this agreement, at which time the firm may respond to the reasons for the recommendation to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, the Committee bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) The Committee shall maintain a complete record of the hearing and will retain the original record of the hearing at the site of the Processing Agency. The Committee may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, the Committee bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as it would during a hearing.

(4) The decision of the reviewing agency shall be binding upon the UCP.

(c) Separation of functions. The Committee shall ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. The decision maker shall be an individual who is knowledgeable about the certification requirements of the DBE program and this agreement as agreed upon by mutual consent by the Committee. The Committee has currently agreed to utilize the following reviewing agencies: Contracting: Arizona Dept. of

Transportation and Alaska Dept. of Transportation DBE Program Managers.  
Concessions: Director of Clark County Department of Aviation. The Processing Agency shall facilitate the hearing, by telephone, at no cost to the DBE.

(d) Grounds for Decision. The decision to remove eligibility shall not base a on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. Such a decision shall be based only on one or more of the following:

- (1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
- (2) Information or evidence not available to the Committee at the time the firm was certified;
- (3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
- (4) A change in the certification standards or requirements of the Department since the Committee certified the firm; or
- (5) A documented finding that the Committee's determination to certify the firm was factually erroneous.

(e) Notice of decision. Following the final decision, The Committee/Processing Agency shall provide the firm written notice of the decision not later than ten (10) working days of the final decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice shall inform the firm of the consequences of the decision and of the availability of a final appeal to the U.S. Department of Transportation as stated in 3.5 of this agreement.

(f) Status of firm during proceeding.

- (1) A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility.
- (2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (f) of this section.

(g) Effects of removal of eligibility. When the Committee removes a firm's eligibility, it shall take the following action:

- (1) The firm shall not be a DBE even though the firm's name may remain in the directory until the next update.
- (2) When a prime contractor has made a commitment to use the ineligible firm, or a Recipient has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before the Committee issues the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal

or overall goal. The Recipient shall direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to the Recipient that it has made a good faith effort to do so.

(3) If a prime contractor has executed a subcontract with the firm before the Committee has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard or Personal Net Worth cap during the performance of the contract, the Recipient may continue to count its participation on that contract toward overall and contract goals.

(h) Availability of appeal. A firm may appeal the removal of eligibility under this section to the Department under section 3.5 of this agreement.

### **3.5 Appeals**

A firm denied certification or whose eligibility is removed by the Committee, may make an administrative appeal to the Department.

(a) A complainant in an ineligibility complaint to the Committee may appeal to the Department if the Committee does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding as outlined in Section 3.4, above, determines that the firm is eligible.

(b) Send appeals to the following address:  
U.S. Department of Transportation  
Office of Civil Rights  
400 7th Street, S.W., Room 5414  
Washington, D.C. 20590

(c) Pending the Department's decision in the matter, the Committee's decision remains in effect. The Department does not stay the effect of the Committee's decision while it is considering an appeal.

(d) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

### **3.6 Result of Appeal**

(a) The decision of an appeal under section 3. of this agreement is binding on all recipients party to the UPC.

(b) The UCP shall take action as described in the Regulation to implement the result of the appeal.

## **SECTION 4. STANDARDS**

### **4.1 Generally**

- (a) In determining whether to certify a firm as eligible to participate as a DBE, the Committee shall apply the standards set forth in 49 CFR, Part 26.
- (b) The Committee may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.
- (c) The Committee shall evaluate the eligibility of a firm on the basis of the requirements set forth in the Regulation.

### **4.2 Business Size**

- (a) To be an eligible DBE, a firm (including its affiliates) shall be an existing small business, as defined by Small Business Administration (SBA) standards or as determined by governing Department regulations. The Committee shall apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts where not otherwise revised by conditions of the Regulation limiting overall size standards or in determining size standards for Airport Concessions.
- (b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$17,420,000. The Secretary may adjust this amount for inflation from time to time.

### **4.3 Confidentiality**

The Committee shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential personal-financial or business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the Committee shall not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without written consent of the submitter.

## **SECTION 5. COOPERATION**

All participants in the Department's DBE program (including, but not limited to, the Committee, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and Committee compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a

ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or-suspension and debarment.)



**ATTACHMENT 10**  
**SMALL BUSINESS ELEMENT**



## Small Business Element

### 1. Objective/Strategies

In accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23 and Part 26, The City of Boulder City (CITY) has established a race-neutral Small Business Element (SBE) to provide for the structuring of contracting requirements and concession opportunities in effort to facilitate competition and expand opportunities for small businesses at the Boulder City Municipal Airport.

The SBE program will operate in a race and gender-neutral manner. The program will not be used to discriminate against any company or groups of companies. It has been designed to include all segments of the business community and is open to participation without regard to race, color, sex, religion, national or ethnic origin, age or disability. The CITY's SBE program is open to small businesses regardless of their location. There will be no geographic preference or limitation imposed on small businesses participating in federally funded contracts.

The CITY is committed to taking all reasonable steps to eliminate obstacles for small businesses that may preclude their participation in procurements as contractors or subcontractors. The CITY will meet its objectives using a combination of the following strategies:

- **Small Business Set-Asides:** Prime contracts under \$50,000 will be reviewed as a potential set-aside for small businesses. Only those firms meeting the definition of a small business, will be eligible for award of these contracts.
- **Unbundling:** For large prime contracts and agreements over \$250,000, the CITY will seek opportunities to unbundle projects. Unbundling projects entails separating large contracts into smaller contracts, making the contracting opportunity more suitable for small business participation.
- **Small Business Participation:** Prime contractors/concessionaires should make every effort to solicit small businesses, including DBEs and ACDBEs, to participate as sub-contractors, service providers, suppliers, etc. The CITY will encourage prime contractors to provide subcontracting opportunities to small businesses rather than self-performing all the work involved.

### 2. Definition

A *small business concern* is defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR part 26, §26.65(b).

A business meeting the above requirements is eligible to participate as a small business in the CITY's SBE program. The CITY's SBE program does not take into consideration race or gender when determining eligibility of participation in the SBE program.

For additional information pertaining to the Small Business Size Act and size regulations, visit the U.S. Small Business Administration website, <http://www.sba.gov>.

*Personal Net Worth* standards will be consistent with 49 CFR 26 thresholds.



### 3. Verification

The CITY will accept small business participation in the SBE program from those businesses (DBEs and non-DBEs) that have had their small business status verified. The CITY does not take into consideration race or gender in the determination of meeting the small business requirement.

Businesses that are currently certified as one of the following automatically qualify to participate in the CITY's SBE program since they meet the prescribed definitions for small business eligibility:

- By the Nevada UCP as an **ACDBE** or **DBE**,
- By the U.S. Small Business Administration as one of the following:
  - Small Disadvantaged Business (**SBD**)
  - Women-Owned Small Business/Economically Disadvantaged Women-Owned Small Businesses (**ED/WOSB**)
  - Veteran-Owned Small Business/Service-Disabled Veteran-Owned Small Business (**SD/VOSB**)
  - 8(a) Small Business Development Program (**8(a)**)
  - SBA Mentor-Protégé Program (**SBA MP**)
  - HUBZone Program (**HUBZone**)
- By the Nevada Emerging Small Business (**ESB**) Program, as either ESB Tier 1 or ESB Tier 2

Businesses not certified under any of the programs listed above but believe that their business qualifies as a small business in accordance with 13 CFR Part 121 or 49 CFR Parts 23 and 26 are required to submit all documentation to the CITY for verification. Non-certified small business will also be referred to the appropriate certifying agency to pursue certification.



Small Business Certifications Accepted for Participation in the CITY's SBE Program

| Jurisdiction | Certification  | Link  |
|--------------|--|---|
| Federal      | Disadvantaged Business Enterprise (DBE)  | <a href="http://www.nevadadbe.com/website/dbe-program.php">http://www.nevadadbe.com/website/dbe-program.php</a>   |
| Federal      | Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)                               | <a href="http://www.nevadadbe.com/website/dbe-program.php">http://www.nevadadbe.com/website/dbe-program.php</a>   |
| Federal      | Small Disadvantaged Business (SBD)   | Program Information:<br><a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/small-disadvantaged-business">https://www.sba.gov/federal-contracting/contracting-assistance-programs/small-disadvantaged-business</a><br><br>Certification Search:<br><a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a>   |
| Federal      | Women-Owned Small Business / Economically Disadvantaged Women-Owned Small Businesses (ED/WOSB) | Program Information:<br><a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/women-owned-small-business-federal-contract-program">https://www.sba.gov/federal-contracting/contracting-assistance-programs/women-owned-small-business-federal-contract-program</a><br><br>Certification Search:<br><a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a> |
| Federal      | Veteran-Owned Small Business / Service-Disabled Veteran-Owned Small Business (SD/VOSB)         | Program Information:<br><a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/veteran-contracting-assistance-programs">https://www.sba.gov/federal-contracting/contracting-assistance-programs/veteran-contracting-assistance-programs</a><br><br>Certification Search:<br><a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a>                         |
| Federal      | 8(a) Small Business Development Program (8(a))   | Program Information:<br><a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program">https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program</a><br><br>Certification Search:<br><a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a>   |
| Federal      | SBA Mentor-Protege Program (SBA MP)  | Program Information:<br><a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protege-program">https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protege-program</a><br><br>Certification Search:<br><a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a>   |
| Federal      | HUBZone Program (HUBZone)  | Program Information:<br><a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program">https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program</a><br><br>Certification Search:<br><a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a>   |
| State        | Emerging Small Business Program (ESB)  | <a href="https://goed.nv.gov/programs/emerging-small-business-esb/">https://goed.nv.gov/programs/emerging-small-business-esb/</a>   |



#### 4. Monitoring/Record Keeping

As part of the SBE program, the CITY will monitor and track participation of DBE/ACDBEs and other small businesses in federally-funded projects. Only small businesses that are certified as DBE/ACDBEs will be counted towards the CITY's overall DBE/ACDBE goals. Participation by SBEs who are not certified as DBEs or ACDBEs will be tracked for informational purposes. These records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

The small business participation will be monitored by reviewing project bidder lists, financial reporting documentation, pay applications for construction projects, or annual ACDBE reports for concessions.

#### 5. Assurances

- The program is permitted under state law;
- Certified DBE/ACDBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
- No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses;
- Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE/ACDBE certification to become certified; and
- The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).